

I love democracy. Public debate—leading to decisions made in a fair and open process regulated by a system with structure, rules, and decorum—is the foundation of our representative system of governance. When people honor each other’s ideas in a spirit of compromise and work together with mutual respect on a level playing field, good decisions are reached and implemented. This electronic age’s technology makes unprecedented access to information readily available, and with easy access to good information the public and elected officials can collaborate to reach even sounder decisions. When people are empowered, informed, and given a voice, the results have greater acceptance with less frustration or bitterness with the outcome. Such is the case even when the decisions don’t go their way, or when compromise leads to only partial victories. These beliefs that I brought to public service have not changed, but sadly I have found that the legislative process as currently practiced on Kauai falls far short of fundamental democratic standards. Access to basic legislative information is being restricted, open dialog and debate is significantly stifled and frequently misinterpreted and often ignored rules of conduct are rendered ineffective.

When I started on the Council in December 2006 I was determined to work hard, go slow, and learn from the senior members on the Council. I felt a huge responsibility having one of seven votes on issues that are important to our community. At first I was in no hurry to put my own proposals forward as there were important issues already on the plate, and I had plenty to learn. My time would come. The one issue I felt I could move on was improving public access to what is clearly public information. To my dismay, however, access to information is not only difficult for the general public. My access as a Council Member is strictly controlled. In a number of ways that will be outlined by Council Member Kawahara, many documents intended for all Council Members are screened, delayed, or even withheld by the County Clerk. I soon discovered that some Council Members had access to information that others did not. I found this situation intolerable and inexcusable. In March 2007 I asked for it to be rectified immediately, a request that remains unfulfilled. The County Clerk—who by adopted Council rules is required to “ forward at once to the proper parties all communications and other matters either directly of through committee as the case maybe ”—refused to rectify the situation, telling me he required direction from the Council Chair, who, by Council rules, supervises the Clerk. The Council Chair refused to address my concerns in any manner. To this day, the Council Chair refuses to sit down with the County Clerk and me to discuss the inequities. On May 24th, 2007 I requested a “staff meeting” with all Council Members to address the issue and was rebuffed. Being the newest Member of the Council, the last thing I wanted was conflict with Kaipō Asing, a man with 22 years of public service that I have long respected and admired. At the time I saw little or no options to address the situation, I was new and it seemed that this is just the way things are done on Kauai, right or wrong. Throughout my professional life I have sought collaboration, not conflict. I decided on a different tactic. After all, I am an elected official, and the Rules of the Kauai County Council are clear as a bell: “Any member can introduce anything.” Accordingly, I decided to write a bill to address the problem head-on. I was having difficulty accessing public documents—including the minutes of the council meetings—and so was the public. My intent was to make access to pertinent legislative materials easily accessible for the public and for myself. I did the research and prepared an online access bill”

When the bill was ready I forwarded the proper memos for placement on the agenda and the Council Chair asked for a meeting (also a first). The Chair said he had decided not to place the bill on the agenda. He pointed out that the minutes of various boards and commissions often were not prepared by the 30 day deadline required by State law and the administration would be “embarrassed.” He suggested we give them time to get in compliance, and then we could place minutes on the internet. This sounded reasonable, it sounded like collaboration. Perhaps we didn’t need a law...we could just implement what is reasonable and customary practice all over the country. To its credit the administration responded, and now board and commission minutes are routinely posted online. When the Clerk and Chair were asked to follow suit and place Council minutes on the web, they refused. Again I asked that my bill requiring posting of public Council documents be placed on the Council agenda for consideration. Again the Chair refused.

But wait...the Council rules say "any member can introduce anything"? The Chair's position is, however, that he has ultimate authority, and nothing goes onto the agenda that he prefers to keep off. I found this unacceptable, and unsupported by the Council rules. More importantly, the essence of the democratic process is that ideas are openly discussed and debated, and then decisions are reached. If I can't convince a majority of the Council, then any proposal I make will not succeed. The people of Kauai expect that the individuals they have elected can do the research and place items on the agenda for consideration and public discussion.

The Sunshine law requires that discussion and debate regarding the Council's business occur in a public meeting, duly posted with an agenda and with opportunities for public input. Surely an elected official has the right to have proposals they believe are in the public interest heard? Yet another tenet of democracy is that although the majority decides, the minority is heard. The minority should have an opportunity to make their case. Perhaps the Council rules needed clarification, so I proposed a clarification of the rules through a Resolution. As expected the Chair refused to place the proposal on the agenda; a real Catch-22, and no public awareness of the issue, much less discussion and decision.

Over the two and a half years I have been on the Council, the Chair has refused to place numerous items I proposed on the Council agenda. These include: open discussion and a bill related to release of County Attorney opinions; a bill proposing funding for a study to address erosion and safety issues at Poipu Beach; and rules related to the release of confidential documents. During the brief time Jay Furfaro was the Chair, the Council did discuss release of attorney opinions, and a bill I authored was introduced (currently deferred pending County Attorney review). Since Kaipo has returned to the Chair, access to the agenda is again restricted, and renewed requests to place minutes on the County web site have been denied.

I believe these issues are very serious. In politics access to information equates to power. Censorship—restricting the access to information to all but a select few—inappropriately provides an advantage to one group over another. When one person controls the agenda, the minority is denied a voice, and important issues are never addressed. If you believe that all Council Members should have equal access to information, that the public should have convenient and ready access to public information, and that all the individuals you elected should have their proposals considered, please write to your Council Members and request that these issues be placed on the agenda and democratically decided. If a majority of the Council disagrees with the proposals so be it, but let's not continue to censor the dialog. Email can be sent to councilmembers@kauai.gov or testimony@kauai.gov. Mail can be sent to Council Services 4396 Rice Street Room 206, Lihue, Hawaii 96766. A more detailed discussion and copies related to this issue can be accessed at www.kauaiinfo.org

Respectfully submitted,

Tim Bynum, Member
County Council of Kauai